



FEDERAL ELECTION COMMISSION
Washington, DC 20463

June 27, 1997

David M. Heller, Esq.
Tryon, Heller & Rayes
The Gibraltar Building
6611 N. Scottsdale Road
Scottsdale, AZ 85250

RE: MUR 4389
Paul LaPrade, Debra Lee LaPrade

Dear Mr. Heller:

On June 20, 1996, the Federal Election Commission notified your clients, Paul LaPrade and Debra Lee LaPrade, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on June 10, 1997, found that there is reason to believe that Paul LaPrade and Debra Lee LaPrade violated 2 U.S.C. § 441a(a)(1)(A), a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred _____

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Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Eugene Bull, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,



John Warren McGarry
Chairman

Enclosures
Procedures
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

MUR: 4389

RESPONDENT: Paul and Debra Lee LaPrade

I. GENERATION OF MATTER

This matter was generated based on information ascertained by the Federal Election Commission ("the Commission") in the normal course of carrying out its supervisory responsibilities, and by a complaint received from Michael J. Schroeder on June 17, 1996 against the Orange County Democratic Central Committee and Edward R. Haskett, as treasurer (a.k.a. Orange County Democratic Party) (the "Democratic Committee" or the "Party"), James ("Jim") Toledano, James ("Jim") Prince, Debra Lee LaPrade, and Paul LaPrade.

The complaint filed by Mr. Schroeder asserts that prior to their 12 Day Pre-Election Report due before the March 26, 1996 California Primary, Mr. Toledano, as Chairman, and/or the Democratic Committee received payments of \$5,000 or more from Debra Lee LaPrade and Paul LaPrade to be used in support of the election of Jim Prince to California's 46th Congressional District. Complainant alleges that the Democratic Committee filed no pre-election report of any kind disclosing the receipt of said payments. He further alleges the monies were used to finance a mailer supporting the candidacy of Mr. Prince. The mailer was mailed "after the 20th day, but more than 48 hours, before 12:01 A.M. of the day of election." However, no 48 hour notification was

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filed. Moreover, the required disclaimer was not included even though the mailer expressly advocated Jim Prince's candidacy.

Finally, Complainant contends that the payments by Debra Lee LaPrade and Paul LaPrade caused each of them to exceed applicable contribution limits of the Act.

II. FACTUAL AND LEGAL ANALYSIS

A. Response

In their response to the complaint, counsel for Debra and Paul LaPrade states that prior to the 1996 primary for the California 46th Congressional District, the LaPrades had no experience or expertise with Federal election laws. In February 1996, Ms. LaPrade "called the [Democratic Committee] and spoke with James Toledano. Mr. Toledano identified himself as the Orange County Democratic party chairman and as an attorney. [Ms. LaPrade] advised Mr. Toledano that she and her husband wanted to make contributions to the Orange County Democratic party for voter awareness. She was told by Mr. Toledano that she and her husband could each contribute up to \$5,000 to the Democratic party" without violating "federal election laws and contribution limits."

According to counsel for the LaPrades, on or about February 20, 1996, a check in the amount of \$10,000 was delivered to the "Orange County Democratic Party" on behalf of Debra and Paul LaPrade. The LaPrades deny earmarking their contributions for any specific candidate, or otherwise placing any conditions on the use of their contributions. Instead, counsel states that Ms. LaPrade was "led to believe that the Democratic party would decide how to effectively utilize their party donations and she therefore left that matter to the good judgment of the Democratic party and its party chairman."

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B. Applicable Law

The Federal Election Campaign Act of 1971, as amended ("the Act"), limits to \$1,000 per election the amount which any person may contribute to a candidate and his or her political committee; and limits to \$5,000 per calendar year the amount which any person may contribute to any political committee -- other than political committees established and maintained by a national party, which are not the authorized political committees of any candidate. 2 U.S.C. § 441a(a)(1)(A) and (C).

Pursuant to the Commission's regulations at 11 C.F.R. § 110.1(h), "a person may contribute to a candidate or his or her authorized committee with respect to a particular election and also contribute to a political committee which has supported, or anticipates supporting, the same candidate in the same election, as long as: (i) the political committee is not the candidate's principal campaign committee or other authorized political committee or a single candidate committee; (ii) the contributor does not give with the knowledge that a substantial portion will be contributed to, or expended on behalf of, that candidate, for the same election; and (iii) the contributor does not retain control over the funds."

The term "contribution" includes (i) any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office; or (ii) the payment by any person of compensation for the personal services of another person which are rendered to a political committee without charge for any purpose. 2 U.S.C. § 431(8)(A)(i) and (ii). The term "expenditure" includes any purchase, payment, distribution, loan, advance, deposit, or gift of money or

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anything of value, made by any person for the purpose of influencing any election for Federal office. 2 U.S.C. § 431(9)(A)(i). The Commission has defined "anything of value" to include all in-kind contributions, i.e., "the provision of any goods and services without charge or at a charge which is less than the usual and normal charge for such goods and services" 11 C.F.R. §§ 100.7(a)(1)(iii) and 100.8(a)(1)(iv). Expenditures which are made by any person, including a political committee, "in coordination, consultation or concert with, or at the request or suggestion of, a candidate, his authorized committee or their agents" are considered in-kind contributions to that candidate. 2 U.S.C. § 441a(a)(7)(B)(i). Thus, "[a] communication made in coordination with a candidate presumptively confers 'something of value' received by the candidate so as to constitute an attributable [in-kind] 'contribution.'"

C. Analysis

The Act permits a person to contribute \$5,000 per calendar year to a political committee such as the Democratic Committee. See 2 U.S.C. § 441a(a)(1)(C). Thus, ordinarily the Act would not be violated by the LaPrades' contribution of \$5,000 each to the Democratic Committee. However, the Commission's regulations disallow such a contribution to a political committee by a person who has already contributed to a candidate, and has knowledge that a substantial portion of the contribution which they make to the political committee will also be contributed to or spent on behalf of such candidate. See 11 C.F.R. § 110.1(h). If, therefore, the LaPrades knew the money they gave to the Democratic Committee would be spent on behalf of Jim Prince, then their contributions were really made to the candidate.

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Based on the available evidence, the LaPrades knew that their contributions to the Democratic Committee would be used substantially to promote the Prince candidacy. First, as previously stated, Jim Prince is the brother of Debra LaPrade. The LaPrades reside in Phoenix, Arizona, and apparently have no ties to California's 46th Congressional District apart from Jim Prince. According to their counsel, prior to the 1996 primary in the 46th Congressional District of California, the LaPrades "had no experience or expertise with federal election laws." However, on June 21, 1995, the Prince Committee received contributions of \$1,000 each from Debra and Paul LaPrade for the primary election campaign. Additionally, the Prince Committee received a \$1,000 contribution from Debra LaPrade on June 27, 1995, and the same amount from Paul LaPrade on June 30, 1995 for the general election campaign. Also, the Prince Committee reported that it received \$2,000 from each of three LaPrade children on June 30, 1995, for the primary and general election campaigns. Thus, at the time the LaPrades made their contributions of \$5,000 each to the Democratic Committee in March of 1996, neither they nor these children could permissibly make a contribution to the Prince primary or general election campaign.

Further, the *Los Angeles Times* article submitted with the complaint suggests that the LaPrades knew their contributions to the Democratic Committee would be used to support the Prince candidacy. According to the article, Prince's campaign discussed at some point the idea of giving the local Democratic Party money to publicize his candidacy. However, the idea "died out" because the campaign lacked the funds to pursue it. The article further attributes to Prince the statement that his "whole family was

very enthusiastic about the campaign," and to Prince's father the statement that "[the LaPrade contribution] was given to use for the Democratic Party to get the vote out"

Finally, the article reports that when Ms. LaPrade called Jim Toledano, she identified herself as Prince's sister and told him that she had "maxed out" in contributions to her brother's campaign.

By her own admission, Ms. LaPrade advised Mr. Toledano that she and her husband wanted to make contributions to the Democratic Committee for "voter awareness." However, although there were other Orange County Democrats besides Jim Prince who were candidates for Federal office in the 38th, 39th, and 45th Congressional Districts, none of these candidates received an endorsement in the mailer produced with the LaPrades' contribution. The only candidate other than Prince who received an endorsement in the mailer was running for state assembly in a district which overlaps the 46th Congressional District. According to the *Los Angeles Times* article, Prince's name appears on the mailer in type "about twice the size of" that used on the assembly candidate's name. Further, while Prince is pictured on the back of the mailer, the assembly candidate is not.

On the basis of the foregoing, the LaPrades made their contributions to the Democratic Committee with the understanding or the knowledge that the money would be spent to promote the Prince candidacy. Hence, their contributions were not made to the Democratic Committee, but instead were made to the Prince campaign. See 11 C.F.R. § 110.1(h). Because Paul and Debra LaPrade had already made the maximum allowable contribution to the Prince campaign, their additional contributions were made in violation

of the 2 U.S.C. § 441a(a)(1)(A) limit. Accordingly, there is reason to believe Paul and Debra Lee LaPrade violated 2 U.S.C. § 441a(a)(1)(A).

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